

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Acceleration of Broadband Deployment:	)	
Expanding the Reach and Reducing the	)	WC Docket No. 11-59
Cost of Broadband Deployment by Improving	)	
Policies Regarding Public Rights of Way and	)	
Wireless Facilities Siting	)	

**REPLY TO COMMENTS OF THE WIRELESS**  
**INFRASTRUCTURE ASSOCIATION (PCIA), AND OTHERS**  
**BY THE CITY OF CONCORD, NORTH CAROLINA**

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September 28, 2011

## ***I. SUMMARY***

On July 18, 2011 the City of Concord submitted COMMENTS in response to the April 7, 2011 Notice of Inquiry (NOI). The Commission requested information on City of Concord (Concord) government rights-of-way management. Concord replied with a summary of its programs and policies in regards to zoning and rights-of-way management. In particular, the Commission seeks explanations of the local policy objectives which Concord provided at Section VIII of its July response. Concord now supplements its answer with examples of damage to property and unnecessary expense when Concord's rights-of-way management policies were ignored.

## ***II. Concord's Procedures Regarding the Location of Telecommunications Infrastructure is of value to the industry and the public.***

Through its permitting process, Concord attempts to ensure that construction proceeds in an orderly manner that minimizes disruption of traffic, and avoids damage to all other utilities in the rights-of-way. Concord's permitting process focuses not on classifying the work, but instead on the nature of the work to be performed (and its impact), where it is to be performed, when it is to be performed, how long it will take to perform the work, and who is to perform it.<sup>1</sup> Concord has reached agreements for use of the rights-of-way with other utilities, including Public Service of NC (natural gas), Time Warner (internet), Duke (electricity and internet), Windstream (telephone) and others. When these agreements are followed, every party's interests in efficient

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<sup>1</sup> Comments of the City of Concord, North Carolina to FCC, July 18, 2011, p 3 (II. ¶3)

operations and lack of disruption of services are met. When the agreements are not followed, there can be problems, including delays in providing services, disruption of services and expense. Two typical samples follow.

*Example 1:* In July 2011, City installed 598 square yards of ADA-compliant new sidewalks along Lincoln Street in the City of Concord. Telephone and electric poles are shared by Concord and Windstream. Since the early twentieth century Concord and Windstream's predecessor, Concord Telephone Company, had agreements regarding the joint use of poles. By agreement, Windstream and Concord are to notify each other of work on their shared poles, including replacement and/or relocation.<sup>2</sup> In August, 2011, a Windstream contractor moved a pole without notice to a new location thereby destroying a newly-poured section of sidewalk. Windstream moved the same pole a second time causing additional damage to the sidewalk. In total, approximately seven square yards of new sidewalk were destroyed. The pole could have been relocated several weeks earlier before the new sidewalk was installed. Concord paid for all of the sidewalk damage repair and replacement.

*Example 2:* Concord also has a longstanding agreement with Time Warner Cable about the joint use of poles. As in Example 1, notification of the other party is required. Concord has zoning and rights-of-way regulations<sup>3</sup> requiring that no obstructions to vision be constructed at intersections. The areas to remain clear of obstruction are called "sight triangles." Without notice and in violation of the agreement in September 2009 Time Warner Cable removed a

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<sup>2</sup> Windstream Concord Telephone Company, Inc./City of Concord, Joint Pole Use Agreement, February 2010

<sup>3</sup> TW Telecom of North Carolina LP/City of Concord, Joint Pole Use Agreement, August 2008

power supply unit from a pole and placed it on the ground in the sight triangle at the intersection of Beverly and Burrage Roads. This created a traffic hazard as well as a violation of Concord's zoning ordinance<sup>4</sup>. After complaints, Time Warner Cable removed the obstruction from the sight triangle.

### *III. CONCLUSION*

In conclusion, Concord's longstanding agreements with other utilities and telecommunication providers work well for all parties. Problems will increase if Concord is unable to manage its rights-of-way as it does at present. The City's policy objectives would no longer be tenable. Concord's objectives, as listed below, could no longer be attained.

- Keep up with the use of the ROW and the specific location of non-City-owned infrastructure;
- Facilitate the responsible deployment of services;
- Make the services broadly available;
- Ensure public safety;
- Avoid traffic disruption;
- Maintain and repair roadways;
- Prevent public disruption and damage to abutting property;
- Minimize accelerated deterioration to roads that accompanies street cuts;
- Satisfy aesthetic, environmental, or historic preservation concerns;

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<sup>4</sup> City of Concord Code of Ordinances, Technical Standards Manual Art. II §7.5 Sight Triangle Easements. (2011 edition.)

- Avoid damage to the property of others; and
- Except for ROWS, obtain fair compensation for use of public property, to the extent possible and to encourage competition.

Concord strongly urges the FCC to refrain from regulating local rights-of-way management and facility placement processes. These are highly fact-specific matters, which turn on local engineering practices, local environmental and historical conditions, local traffic and economic development patterns, and other significant local community concerns and circumstances. These matters are best managed by local staff with considerable local expertise. Imposing a federal regulatory regime would create unnecessary costs for our community, and it would have the potential to undermine important local policies. Likewise, Commission regulation of charges for use of the rights-of-way could have significant impacts on the community, and may actually make it infeasible to continue to maintain or provide important public services. If the Commission feels compelled to act in this area at all, it should limit itself to voluntary programs and educational activities, and to implementing its own recommendations in the National Broadband Plan for working cooperatively with state and local governments.

Concord urges the Commission to conclude that rights-of-way and facility management and charges are not impeding broadband deployment. In Concord, our policies and procedures are designed to protect important local interests, and have done so for many years. There is no evidence that the policies have impaired any company from providing broadband service here, and there are many reasons to believe that federal regulations would prove costly and disruptive to our community.

In addition, Concord supports, endorses and adopts by reference the  
**COMMENTS OF THE NATIONAL LEAGUE OF CITIES, THE NATIONAL  
ASSOCIATION OF COUNTIES, THE UNITED STATES CONFERENCE OF MAYORS, THE  
INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION, THE NATIONAL  
ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS, THE  
GOVERNMENT FINANCE OFFICERS ASSOCIATION, AND THE AMERICAN PUBLIC  
WORKS ASSOCIATION.**

RESPECTFULLY SUBMITTED, this September 28, 2011

CITY OF CONCORD,  
a North Carolina municipal corporation

By:   
Albert M. Benshoff, City Attorney

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